

RECORDATION NO. 10230 Filed 1425

MAR 28 1979 - 15 PM

OKLAHOMA ELECTRIC COMPANY 321 North Harvey Post Office Box 321 Oklahoma City, Oklahoma 73101 Telephone 405-272-3000



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7/8/75 JB*

RECORDATION NO. 10230-B Filed 1425

MAR 28 1979 - 15 PM

INTERSTATE COMMERCE COMMISSION

MAR 27 12 04 PM '79

OFFICE OF SECRETARY

March 21, 1979

9-083A150
Date 3-27-79
Fee \$ 120.00

RECORDATION NO. 10230-C Filed 1425

MAR 28 1979 - 15 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th Street and Constitution Avenue,
Washington, DC 20423

Attention: Secretary

Gentlemen:

Enclosed herewith for filing and recording, pursuant to Section 20c of the Interstate Commerce Act, are eight executed counterparts of the following:

1. Conditional Sale Agreement dated as of February 1, 1979, between Thrall Car Manufacturing Company and Mercantile-Safe Deposit and Trust Company;
2. Agreement and Assignment dated as of February 1, 1979, between Thrall Car Manufacturing Company and Fidelity Bank National Association, as Agent;
3. Lease of Railroad Equipment dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and Oklahoma Gas and Electric Company; and
4. Assignment of Lease and Agreement dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and Fidelity Bank National Association, as Agent.

The foregoing documents relate to the purchase and financing of:

450 100-ton (4,000 cu. ft.) high-side steel gondola cars with swivel couplers (Car Nos. OGEX 581 through 1022 and OGEX 5009 through 5016, both inclusive).

Enclosed is our check in the amount of \$120 in payment of the applicable recording fees.

Boyer

(Signature)

7

Interstate Commerce Commission
Page Two
March 21, 1979

Please deliver five counterparts, each bearing recordation data with respect to the filing pursuant to the provisions of Section 20c of the Interstate Commerce Act, to the bearer of this letter.

For your records, the names and addresses of the parties to the several instruments are as follows:

Fidelity Bank National Association
P. O. Box 24128
Oklahoma City, OK 73124
Attention: Mr. Walt Pralle

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, MD 21201
Attention: Corporate Trust Department

Thrall Car Manufacturing Company
P. O. Box 218
Chicago Heights, IL 60401
Attention: Mr. John P. Lynch
Vice President - Sales

Oklahoma Gas and Electric Company
321 North Harvey Avenue
Oklahoma City, OK 73101
Attention: Mr. R. Drake Keith
Senior Vice President-Finance

Very truly yours,



R. Drake Keith
Senior Vice President-Finance

Enclosures

RECORDATION NO. 10230-B Filed 1425

MAR 28 1979 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

10230-B

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Trustee

and

GAS
OKLAHOMA AND ELECTRIC COMPANY

450 ONE HUNDRED-TON

STEEL GONDOLA COAL CARS

OFFICE OF SECRETARY
ICC

MAR 27 1 44 PM '79

RECEIVED

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1979 between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Trustee (hereinafter, together with its successors and assigns, called the Lessor) under an Amended and Restated Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with THE FIRST OKLAHOMA INVESTMENTS CORPORATION and BANKERS TRUST COMPANY (hereinafter called collectively the Beneficiaries and individually a Beneficiary), and OKLAHOMA GAS AND ELECTRIC COMPANY (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) with THRALL CAR MANUFACTURING COMPANY (hereinafter called the Builder) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Lessor of the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS, the Builder and FIDELITY BANK NATIONAL ASSOCIATION, as Agent (hereinafter called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessee, the Builder, the Beneficiaries and the Investors named therein, have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) assigning to the Assignee the right, security title and interest of the Builder under the Conditional Sale Agreement as security for the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

WHEREAS, the Lessee desires to lease all the units of the Equipment, or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreement, at the rentals, for the terms and upon the conditions hereinafter stated (such number of units as are delivered, accepted and settled for under the Conditional Sale Agreement being hereinafter called the Units); and

WHEREAS, in order to provide further security for the payment of the Conditional Sale Indebtedness and as an inducement to the Investors to invest in the Conditional Sale Indebtedness, the Lessor will, concurrently with its execution and delivery of this Lease, enter into an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) with the Assignee assigning for security purposes certain of its rights in, to and under this Lease to the Assignee;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

SECTION 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee as its agent for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Conditional Sale Agreement and the Assignment. Each Unit is to be delivered to the Lessee, acting as such agent of the Lessor, by the Builder under the Conditional Sale Agreement at the place of delivery designated in the Conditional Sale Agreement and in Annex A hereto. As provided in Article 3 of the Conditional Sale Agreement, each Unit is to be delivered, inspected and accepted concurrently with the settlement therefor on the Closing Date for such Unit pursuant to Article 4 of the Conditional Sale Agreement. Upon such delivery on such Closing Date, the Lessee will cause an employee of the Lessee or an authorized representative of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on such

Closing Date on behalf of the Lessor under the Conditional Sale Agreement and on its own behalf hereunder and execute and deliver to the Lessor and the Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance), in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on such Closing Date and is marked in accordance with Section 5, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall thereafter be subject to all the terms and conditions of this Lease, and the Lessee may, upon, but not prior to, completion of the settlement for such Unit in accordance with Article 4 of the Conditional Sale Agreement commence its use of such Unit pursuant to Section 13 hereof.

SECTION 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semi-annual payments on January 1 and July 1 in each year, commencing July 1, 1979. The rental payment due on July 1, 1979 shall be in an amount equal to .027083% of the Purchase Price (as defined in the Conditional Sale Agreement) of each Unit then subject to this Lease for each day elapsed from the Closing Date (as defined in the Conditional Sale Agreement) for such Unit computed on the basis of the actual number of days elapsed between such dates on a calendar year basis, to and including the date of such payment. The next 30 semi-annual rental payments shall each be in an amount equal to 4.193% of the Purchase Price of each Unit then subject to this Lease. The foregoing rental rates have been calculated on the assumption that (i) the Units will be placed under this Lease in accordance with the schedule and at the dates set forth at Annex A hereto and (ii) the aggregate Purchase Price of the Units will not exceed \$16,335,000. If for any reason there is a material deviation in the dates the Units are placed under this Lease from the delivery schedule set forth in Annex A hereto or if the aggregate Purchase Price of the Units exceeds \$16,335,000, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Section 7 hereof will be adjusted, if necessary in the Lessor's reasonable opinion, in order that the Lessor's net after-tax annual rate of return (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Lessor in establishing the rental rate for this transaction) will not be increased or decreased by reason thereof; provided, however, that the rentals and Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the Conditional Sale Agreement, notwithstanding any limitation of liability contained therein.

If any of the semi-annual rental payment dates referred to above is not a Business Day (as defined in Article 4 of the Conditional Sale Agreement) the semi-annual rental

payment otherwise payable on such date shall be payable on the next following Business Day.

The Lessee agrees to pay to the Lessor as supplemental rental hereunder (i) the amounts, if any, required to be paid by it pursuant to the fifth paragraph of Paragraph 1 and the fourth paragraph of Paragraph 4 of the Finance Agreement at the times therein provided and (ii) as and when requested by the Lessor, such amounts as shall then be due under the last sentence of Section 20.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Assignee until the Assignee shall have been paid the full Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement), for the account of the Lessor, in care of the Assignee, with instructions to the Assignee first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement known to the Assignee to be due and payable on the date such payments are due and payable hereunder and thereunder and second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance by wire transfer of immediately available funds on the date so received to the Lessor at such address as may be specified by the Lessor in writing, unless and until the Lessor shall otherwise direct the Assignee in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph by 10:00 A.M., Oklahoma City time, in Federal funds current on the date when and in the city where such payment is to be made.

SECTION 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder in accordance with the provisions of Section 2 hereof and, subject to the provisions of Sections 7, 8, 11 and 14, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3.

Anything herein to the contrary notwithstanding, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Assignee under the Conditional Sale Agreement and the Assignment. Subject only to the rights of the Lessor against the Lessee referred to in Article 16 of the Conditional Sale Agreement, if an Event of Default shall occur and be continuing under the Conditional Sale Agreement, the Assignee may terminate this Lease (or rescind its termination), all as provided herein, unless the Lessee is not in default under this Lease.

SECTION 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any

Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by a Bank or Trust Company. Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission", with appropriate changes thereof and additions thereto as from time to time may be required by applicable rules, regulations and laws, including, but not limited to, the rules and regulations of the Association of American Railroads, in order to protect the Lessor's and the Assignee's title to and property interest in such Unit and the rights of the Lessor under this Lease and of the Assignee under the Conditional Sale Agreement.

In the event that the Lessor shall become obligated to change any markings on any Unit or to incur any cost in connection therewith pursuant to Article 15 of the Conditional Sale Agreement, the Lessee shall, at the request of the Lessor, make such marking changes and pay to the Lessor such additional amounts as will enable the Lessor to fulfill such obligations under said Article 15. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Assignee and the Lessor and filed, recorded, registered and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded, registered and deposited and (ii) the Lessee shall have furnished to the Assignee and the Lessor an opinion of counsel for the Lessee with respect thereto satisfactory to the Assignee and the Lessor.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee.

SECTION 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax payable by the Lessor in consequence of the receipt of payments provided

herein and other than the aggregate of all state and city income taxes and franchise taxes measured by net income or gross income or gross receipts taxes based on such receipts other than gross receipts taxes in the nature of sales or use taxes, up to the amount of any such taxes which would have been payable to states and political subdivisions thereof by the Beneficiaries without regard to this Lease, the Finance Agreement, the Conditional Sale Agreement and the transactions contemplated therein, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, documentary stamp taxes, or license fees and any charges, fines or penalties in connection therewith (hereinafter called collectively Impositions) now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement or any assignment hereof or thereof, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the rights of the Assignee under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessor or the Assignee directly and paid by the Lessor, the Lessee shall reimburse the Lessor or the Assignee on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Assignee pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this Section 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

The amount which the Lessee shall be required to pay in accordance with this Section 6 shall be an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or

subdivision or any taxing authority thereof or therein, is sufficient (in the reasonable opinion of the Lessor who may take into account each Beneficiary's tax position, but without the utilization of any tax benefit of any Beneficiary not attributable to the receipt of such amount except to the extent that any such tax benefit would in the opinion of the Beneficiary to whom it belongs otherwise expire unused) to restore the Lessor and each Beneficiary to the same after-tax position that they would have been in had the Impositions giving rise to such payments not been imposed. The amount to be paid to the Lessor pursuant to the preceding sentence shall be determined by the Lessor whose good faith determination shall be conclusive.

In the event any reports with regard to Impositions are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interests of the Lessor and the Builder or the Assignee in the Units as shall be satisfactory to the Lessor and the Assignee or, where not so permitted, will notify the Lessor and the Assignee of such requirement and will prepare and deliver such reports to the Lessor and the Assignee within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor, the Beneficiaries and the Assignee.

In the event that, during the term of this Lease, including any renewal thereof, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall become lost, stolen, destroyed, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only in the case of an indefinite period, after such taking or requisition continues for a period of one year, or by any other governmental entity resulting in loss of possession by the Lessee for a period of one year during the term of this Lease (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor and the Assignee with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect to such Unit not theretofore paid and which are due and payable on or prior to such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon

(but not prior to) the making of such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence (including any Unit suffering a Casualty Occurrence during the storage period provided for such Unit in Section 15 hereof) or any component thereof at the best price obtainable on an "as is, where is" basis. If the Lessee shall have previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>
July 1, 1979.....	104.6421
January 1, 1980.....	107.2583
July 1, 1980.....	106.9325
January 1, 1981.....	108.2045
July 1, 1981.....	107.6439
January 1, 1982.....	108.1869
July 1, 1982.....	107.4771
January 1, 1983.....	100.8063
July 1, 1983.....	99.7663
January 1, 1984.....	99.1983
July 1, 1984.....	97.9995
January 1, 1985.....	90.3267
July 1, 1985.....	88.7915
January 1, 1986.....	87.4475
July 1, 1986.....	85.6941
January 1, 1987.....	77.2688
July 1, 1987.....	75.2122
January 1, 1988.....	73.2400
July 1, 1988.....	70.9926
January 1, 1989.....	68.7414
July 1, 1989.....	66.3326
January 1, 1990.....	63.8772
July 1, 1990.....	61.3282
January 1, 1991.....	58.7432
July 1, 1991.....	56.0870
January 1, 1992.....	53.4311
July 1, 1992.....	50.7269
January 1, 1993.....	48.0521
July 1, 1993.....	45.3441
January 1, 1994.....	42.6838
July 1, 1994.....	40.0000

Whenever any Unit shall suffer a Casualty Occurrence after expiration of this Lease and before such Unit shall have been returned in the manner provided in Section 15 hereof or during the 120 day storage period provided for such Unit in said Section 15, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to 40% of the Purchase Price of such Unit. Upon (but not prior to) the making of such payment by the Lessee in respect of any Unit, the storage period with respect to such Unit shall terminate and the Lessor shall be entitled to recover possession of such Unit.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

In the event of the requisition for use by the United States Government or any other governmental entity (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except to the extent the Lessee's obligations are modified pursuant to the first paragraph of this Section 7 with respect to any such requisition which represents a Casualty Occurrence, as defined therein; provided, however, that if any Unit requisitioned by the Government is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 12 or Section 15 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said Section 12 or Section 15, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice, demand and/or lapse of time would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall, to the extent of the Casualty Value theretofore paid by the Lessee, be paid over to, or retained by the Lessee, and any such amounts paid in excess of such Casualty Value shall be paid over to, or retained by, the Lessor.

The Lessee will, at all times while this Lease is in effect (including during any storage period as described in

Section 12 or Section 15 hereof), at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment similar to the Units which is owned or leased by the Lessee; provided, however, that in the case of property insurance, the Lessee will be permitted to self-insure to the extent it self-insures property of a similar nature to the Units and to the extent consistent with prudent industry practice. Such insurance, except to the extent the Lessee is permitted to and does self-insure, shall be maintained with insurance companies, underwriters or funds which shall be satisfactory to the Lessor and the Assignee and which shall be authorized to do business in the jurisdictions in which the Units may from time to time be located. At or prior to the date the first Unit is placed under this Lease, the Lessee shall deliver Certificates of Insurance to the Lessor, the Assignee and each Beneficiary which shall provide that the Assignee, the Lessor and the Beneficiaries shall receive not less than 30 days' written notice of any cancellations of any of such policies or of any material change in the coverage to be provided thereunder. All such public liability insurance shall protect the Lessee, the Lessor, the Beneficiaries and the Assignee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Units. All such property insurance shall cover the interests in the Units of the Lessee, the Lessor, the Beneficiaries and the Assignee and shall provide that losses in respect of the Units shall be payable to such insureds as their respective interests may appear; provided that so long as any indebtedness under the Conditional Sale Agreement shall remain unpaid, losses under such property insurance shall be payable to the Assignee under a standard mortgage loss payable clause satisfactory to the Assignee. Any net property insurance proceeds resulting from insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 7. If the Lessor shall receive any such net property insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this Section 7 without deduction for such net property insurance proceeds or such condemnation payments, the Lessor shall pay such net property insurance proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be

retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11. The balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds received by the Lessor or the Lessee with respect to a Unit not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Unit, and any balance remaining after the completion of such repairs shall be paid to the Lessee unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11. Except as otherwise hereinabove provided, any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of the Lessor.

Copies of all insurance policies issued pursuant to the provisions of the preceding paragraph shall be delivered to the Assignee and the Lessor.

SECTION 8. Voluntary Termination. Unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled, at its option, upon at least 120 days prior written notice to the Lessor and the Assignee, to terminate this Lease as to all (but not less than all) of the Units if the Lessee shall have made a good faith determination that all (but not less than all) of the Units have become obsolete or economically unserviceable to the Lessee's operations, which notice shall be accompanied by a certified copy of resolutions adopted by the Board of Directors of the Lessee making such determination and a written statement of the President or a Vice-President of the Lessee setting forth a summary of the basis for such determination; provided, however, that such termination shall become effective only on a rental payment date (hereinafter in this Section 8 called the Termination Date) and in no event prior to July 1, 1989; and provided further, that such termination shall not take effect unless the Lessee shall have fully complied with the succeeding paragraphs of this Section 8. For the purposes of this Section 8, interest rates or similar finance charges payable by the Lessee in connection with the acquisition of similar equipment under conditional sale contracts, leases or other arrangements for deferred payment of the purchase price thereof, shall be disregarded in the determination of obsolescence or economic unserviceability.

During the period from the giving of such notice to the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of all

the Units on an "as is, where is" basis, and the Lessee shall certify to the Lessor in writing the amount of each bid received and the name and address of the person (who shall not be the Lessee or any person, firm or corporation which is an affiliate of the Lessee) submitting such bid. An "affiliate" of the Lessee shall mean any person which possesses, directly or indirectly, the right to vote at least 20% of the voting securities of the Lessee, or any person which, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. On the Termination Date, the Lessor shall, without recourse or warranty, sell all the Units for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, and thereupon the Lessee shall cause to be delivered the Units to the Lessor in accordance with the terms of Section 15. If the sale of all the Units shall not occur on the Termination Date, the Lessee shall not cause such delivery of any of the Units to the Lessor; and this Lease shall continue in full force and effect as to all of the Units. The Lessor shall be under no duty to (but may) solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this Section 8.

The total sale price realized at any such sale of the Units shall be retained by the Lessor and, in addition, the Lessee shall pay to the Lessor the excess, if any, of (i) the Casualty Value of the Units computed as of the Termination Date over (ii) the proceeds of such sale less all expenses including reasonable counsels' fees incurred by the Lessor in connection with such sale or with the collection or distribution of such payment. The Lessee shall also be obligated to pay the Lessor any and all rentals and other sums due hereunder with respect to the Units accrued up to and including the Termination Date. In the event of such sale and compliance by the Lessee with all the provisions of this Section 8, the obligations of the Lessee to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

SECTION 9. Reports. On or before March 31 in each year, commencing with the year 1980, and at such other times as the Lessor may reasonably request, the Lessee will furnish to the Lessor and the Assignee an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other

than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor or the Assignee may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 and the Conditional Sale Agreement have been preserved or replaced. The Lessor and/or its duly appointed agents shall have the right to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

The Lessee will promptly furnish to the Lessor and the Assignee (i) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of its Form 10-K Annual Report to the Securities and Exchange Commission for such fiscal year (or any other comparable report substituted therefor which includes certified annual financial information), (ii) as soon as available, and in any event within 45 days after the end of each of the first three quarterly periods of each such fiscal year, copies of its Form 10-Q Reports to the Securities and Exchange Commission for such quarterly periods (or any other comparable report substituted therefor which includes quarterly financial information), and (iii) as soon as available, copies of its Uniform Statistical Report, which it prepares annually.

At the time of the delivery of the financial statements pursuant to clause (i) of the preceding paragraph, the Lessee will deliver to the Lessor and the Assignee a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during the accounting period covered by such financial statements has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and that, to the best of his knowledge, the Lessee during such accounting period has kept, observed, performed and fulfilled each and every covenant and obligation contained herein, or if an Event of Default under this Lease shall exist, existed or if an event has occurred which, with notice, demand and/or lapse of time, would constitute such an Event of Default, specifying such Event of Default or such event and the nature and status thereof.

SECTION 10. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE

UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee as its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 14 of the Conditional Sale Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor or its successors and assigns may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages of any person; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all of the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees for the benefit of the Lessor and the Assignee, to comply in all respects with all laws (including, but not limited to, laws with respect to the use, maintenance and operation of each Unit) of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation, maintenance or use of the Units; and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of

the Lessor or the Assignee, adversely affect the property title or rights of the Lessor or the Assignee under this Lease or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

Any and all additions to any Unit, and any and all parts installed on and additions and replacements made to any Unit (other than such parts, additions or replacements which can be removed from a Unit without material damage to that Unit, which parts, additions or replacements shall remain the property of the Lessee), shall constitute acccessions to such Unit and ownership thereof, free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement or this Lease), shall immediately be vested in the Lessor and the Assignee as their respective interests appear in such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, each Beneficiary and the Assignee, and their respective successors, assigns, agents and servants, from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (including, but not limited to, claims in which negligence or breach of warranty or contract of such indemnified part is or are alleged), regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, including, but not limited to, those in any way relating to or arising or alleged to arise out of: (i) the manufacture, construction, financing, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, possession, sublease, transport, storage, use, operation, condition, maintenance, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units, resulting or allegedly resulting from the condition of any thereof, and (vi) any violation or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the lease, ownership, use, replacement, adaptation

or maintenance thereof. In the event that the Lessor shall become obligated to make any payment to the Builder pursuant to Article 14 of the Conditional Sale Agreement not covered by the foregoing sentence, the Lessee shall pay such additional amounts to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 14. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The amount which the Lessee shall be required to pay with respect to any indemnification under this Section 10 shall be an amount sufficient to restore the indemnified party to the same net after-tax position, after considering the net after-tax effect of the receipt of such indemnification by the indemnified party on its United States Federal, state and local income taxes or franchise taxes based on net income, that the indemnified party would have been in had such taxes not been imposed. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease or any renewal term hereof.

The Lessee agrees to prepare, deliver to the Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent permissible, to prepare for and file on behalf of the Lessor directly) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Assignee of the Units or the leasing thereof to the Lessee.

SECTION 11. Default. If during the continuance of this Lease or any renewal term hereof one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(A) default shall be made in payment of any part of the semi-annual rentals provided in Section 3, and such default shall continue for ten days;

(B) default shall be made in payment of any amount required to be paid by the Lessee hereunder, other than the semi-annual rentals provided in Section 3, and such default shall continue for ten days after written notice from the Lessor to the Lessee specifying such failure of payment and demanding that the same be paid;

(C) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(D) the Lessee shall fail to maintain insurance in accordance with Section 7;

(E) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained in this Lease, in the Finance Agreement or in any other agreement entered into concurrently herewith relating to the financing or leasing of the Units, and such default shall continue for 20 days after written notice from the Lessor to the Lessee specifying such default and demanding that the same be remedied;

(F) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, and, if such proceedings have been commenced against the Lessee, such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such proceedings shall have been commenced, or the Lessee shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due; or

(G) any representations or warranties made by the Lessee herein or in any other agreement, statement or certificate furnished to the Lessor, any Beneficiary or the Assignee in connection with this Lease or the transaction contemplated hereby, proves untrue in any material respect as of the date of issuance thereof;

then, in any such case, the Lessor, at its option, may:

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(2) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may, by its agents, enter upon the premises of the Lessee or any other premises where any of the Units may be located and take

possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatsoever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, which represents the excess of the present worth, at the time of such termination, of all rentals therefor which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Unit for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess, if any, of the Casualty Value of such Unit as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value thereof at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this clause (a) with respect thereto, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumula-

tive and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise any of the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessor and the Lessee shall each give prompt notice to the other and to the Assignee and to each Beneficiary of any Event of Default of which the Lessor or the Lessee shall have knowledge.

The foregoing provisions of this Section 11 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 12. Return of Units upon Default. If this Lease shall terminate pursuant to Section 11, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and shall meet all applicable standards of the Department of Transportation and comply with the applicable Interchange Rules of the Mechanical Division of the Association of American Railroads. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

- (a) place the Unit or Units in the standard of condition as specified above;
- (b) forthwith place such Units upon such storage tracks as the Lessor reasonably may designate;
- (c) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and
- (d) cause the same to be delivered to any carrier for shipment as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as in this Section 12 provided shall be at the expense and risk of the Lessee for a period of nine months following such termination and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored as hereinabove provided within thirty days after such termination, the Lessee shall, in addition to any amounts payable by the Lessee in accordance with Section 11, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027083% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 12, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time, subject to all mandatory requirements of due process of law.

SECTION 13. Assignment; Possession and Use; Liens. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Such rights and obligations of the Lessor hereunder as shall be so assigned shall inure to the benefit of the Lessor's assigns. Whenever the term "Lessor" is used in this Lease, it shall apply and refer to the Lessor and each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, sublease (except as hereinafter in this paragraph provided) or transfer its leasehold interest under this Lease in the Units or any of them; provided,

however, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of the Lessee under this Lease by reason of the existence of an after-acquired property clause in any mortgage to which the Lessee is a party covering substantially all of its utility property; and provided further, that in no event shall any Unit be delivered to, or accepted or used by, the Lessee under this Lease prior to the settlement for such Unit on the Closing Date therefor as provided in Article 4 of the Conditional Sale Agreement. Without the prior written consent of the Lessor, the Lessee shall be permitted to enter into one or more subleases with respect to the Units so long as, at the time of any such sublease and after giving effect thereto: (i) no Event of Default shall have occurred and be continuing, (ii) such sublease shall by its terms be made expressly subject and subordinate to this Lease and to the terms and provisions hereof, (iii) such sublease shall contain terms and provisions substantially similar to those contained herein with respect to the maintenance and operation of the Equipment and with respect to the rights and remedies of a lessor upon the occurrence of an Event of Default, (iv) each such sublease shall cover not less than 50 of the Units and (v) no such sublease shall be for a term in excess of one year, and in any event, shall not be for a term extending beyond the expiration of the term of this Lease. In no event shall any assignment, transfer or sublease relieve the Lessee of any of its obligations, liabilities or duties hereunder which shall be and remain those of a principal and not a guarantor. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any person which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Assignee or resulting from claims against the Lessor or Assignee not related to the ownership of the Units) on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Assignee or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title of the Lessor in or to the Units or otherwise adversely affect its rights or the rights of the Assignee under this Lease or the Conditional Sale Agreement; and provided further, that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the

Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

The Lessee acknowledges and agrees that its rights and the rights of its permitted assigns under this Lease shall at all times be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Assignee under the Conditional Sale Agreement; provided, however, that so long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units only for use in unit train service to haul coal within the continental United States of America and for use in unit train service to haul any other commodity within the continental United States of America if the hauling of such other commodity does not result in wear and tear to the Units beyond that which would result from the hauling of coal of the type mined from the Gillette area of Wyoming.

SECTION 14. Options. Provided this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of not less than all of such Units then covered by this Lease for an additional five-year period (such period being hereinafter called a Renewal Term) commencing on the scheduled expiration of the original term of this Lease. The Lessee may also by written notice delivered to the Lessor not less than 180 days prior to the end of the first Renewal Term elect to extend the term of this Lease in respect of not less than all of the Units then covered by this Lease for an additional five-year period (such period also being hereinafter called a Renewal Term) commencing on the expiration of the first Renewal Term. In the event that the term of this Lease is extended pursuant to the preceding two sentences, the Lessee shall pay rentals at the then Fair Market Rental (as hereinafter defined) of such Units in semi-annual payments on January 1 and July 1 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use or storage shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with

the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 Business Days (as defined in Article 4 of the Conditional Sale Agreement) after such notice is given, each party shall appoint an independent appraiser within 25 Business Days after such notice is given, and the two appraisers so appointed shall within 35 Business Days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 Business Days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Upon the termination of this Lease (other than its termination as provided in Sections 8 and 11), or upon expiration of any Renewal Term, the right of the Lessor to sell any or all of the Units shall be subject to the rights of the Lessee (i) to receive written notice from the Lessor of any offer to purchase any such Units, (ii) to prohibit the Lessor from accepting such an offer prior to the expiration of a period of ten Business Days following the Lessor's giving of such notice and (iii) to prohibit the Lessor from selling such Units to any party if the Lessee makes an irrevocable offer, within ten Business Days after receipt of such notice, to purchase all of the Units proposed to be purchased by such other party at the same price or a higher price, and under the same terms specified in the offer of such other party, provided, however, that no offer made by

the Lessee to purchase such Units may be at a price less than their fair market value, at the time the offer is made.

SECTION 15. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original term of this Lease or any Renewal Term, provided that the Lessee has not agreed to purchase the Units as above provided, the Lessee will, at its cost and expense, at the request of the Lessor, deliver such Units to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and store such Units on such tracks for a period not exceeding 120 days and cause the same to be delivered, at any time within such 120-day period as may be designated by the Lessor upon 20-days' prior written notice to the Lessee, to not more than three interchange points (none of which shall be located further than 800 miles from Oklahoma City, Oklahoma) directed by the Lessor. The movement and storage of such Units shall be at the expense and risk of the Lessee and without charge to the Lessor for insurance. During any such storage period, the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, may inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the right of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 15 shall: (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet all applicable standards of the Department of Transportation and to comply with any applicable Interchange Rules of the Mechanical Division of the Association of American Railroads. The assembling, delivery, storage and transporting of the Units as in this Section 15 provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored as hereinabove provided, within thirty days after such termination, the Lessee shall in addition pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0233% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day. As to any Unit, upon delivery of such Unit to the delivery point designated by the Lessor, or, if earlier, upon the expiration of the 120 day storage period herein provided, the Lessee shall have no further liability with respect to such Unit.

SECTION 16. Opinion of Counsel. On each Closing Date, the Lessee will deliver to the Lessor fifteen counterparts of the written opinions of counsel for the Lessee, addressed to the Lessor and each Beneficiary, to the effect provided in subparagraphs (f) and (g) of the first paragraph of Section 5 of the Assignment.

SECTION 17. Recording. The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment, and any amendments or supplements hereto or thereto, and any further assignments hereof and thereof, to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and the Lessee will undertake the filing, registering, depositing and recording required of the Lessor under the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, re-register, re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee for the purpose of proper protection, to their satisfaction, of the Lessor's and the Assignee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under this Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment; and the Lessee will promptly furnish to the Lessor and the Assignee evidences of all such filing, registering, depositing and recording and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Assignee and their respective counsel.

SECTION 18. Interest on Overdue Rentals. Anything herein to the contrary notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the greater of, computed in each case on the basis of a 360-day year of twelve 30-day months, (i) 10-3/4% per annum, or (ii) 3% per annum in excess of the per annum rate charged by Fidelity Bank National Association, from time to time to its largest and most credit worthy commercial borrowers on 90-day commercial loans of the overdue rentals and other obligations for the period of time during which they are overdue.

SECTION 19. Notices. Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, when mailed registered mail postage prepaid, at the following specified addresses:

(a) To the Lessor, by mail, Mercantile-Safe Deposit and Trust Company, as Trustee, P.O. Box 2258,

Baltimore, Maryland 21203, attention of Corporate Trust Department; by all other means, Mercantile-Safe Deposit and Trust Company, as Trustee, 2 Hopkins Plaza, Baltimore, Maryland 21201, attention of Corporate Trust Department;

(b) To the Lessee, Oklahoma Gas and Electric Company, 321 North Harvey Street, Oklahoma City, Oklahoma 73101, attention of Treasurer;

(c) To the Assignee, Fidelity Bank National Association, as Agent, P.O. Box 24128, Oklahoma City, Oklahoma 73124, attention of Mr. Walter F. Pralle, Senior Vice President and Trust Officer;

(d) To the Beneficiaries, at their addresses set forth in Paragraph 15 of the Finance Agreement;

or to such other address as may have been furnished in writing by such person to the other parties to this Agreement.

SECTION 20. Payment of Expenses. The Lessee agrees to pay (i) all of the costs and expenses incurred by the Lessee in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Conditional Sale Agreement, the Assignment and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or therefor, including the reasonable fees and disbursements of (A) Gardner, Carton & Douglas as special counsel for the Lessee and (B) Rainey, Ross, Rice & Binns as counsel for the Lessee and (ii) any and all commissions, fees, judgments or expenses of any nature or kind which may become payable by reason of any claim by or on behalf of brokers, finders or agents in connection with the transactions contemplated by the Finance Agreement or any litigation or similar proceedings arising from such claims (other than the fees and disbursements of Kidder, Peabody & Co., Inc.) and any other amount claimed by or on behalf of any broker, finder or agent by reason of any arrangement or understanding directly with the person or persons asserting any rights under this sentence. By agreement dated the date hereof (hereinafter called the Expenses Agreement), the Beneficiaries have agreed with the Lessee to pay certain expenses. The Lessee agrees to pay such expenses as supplemental rental in the manner provided in Section 3, to the extent such expenses are not paid by the Beneficiaries under the Expenses Agreement.

SECTION 21. Severability; Effect and Modification of Lease. Any provision of this Lease prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or

render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by Mercantile-Safe Deposit and Trust Company, or for the purpose or with the intention of binding said Mercantile-Safe Deposit and Trust Company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by Mercantile-Safe Deposit and Trust Company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Mercantile-Safe Deposit and Trust Company or any Beneficiary or on account of any representation, covenant, undertaking or agreement of the Lessor, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee.

SECTION 23. Lessor's Right to Perform for the Lessee. It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A), (B), (D) or (E) of the first paragraph of Section 11 of this Lease, and prior to the time that such default or condition shall constitute an Event of Default hereunder, the Lessor may make such payment or perform such other act as will cure such default or condition, and the amount of all payments made by the Lessor on behalf of the Lessee, plus the amount of all reasonable expenses incurred in connection therewith, together with interest thereon, to the extent legally enforceable, at the rate equal to the greater of, computed in each case on the basis of a 360-day

year of twelve 30-day months, (i) 10-3/4% per annum, or (ii) 3% per annum in excess of the per annum rate charged by Fidelity Bank National Association from time to time to its largest and most credit worthy commercial borrowers on 90-day commercial loans, from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder from the Lessee to the Lessor on demand; provided, however, that the Lessor shall not have the right to pay more than two consecutive semi-annual rental payments on behalf of the Lessee.

SECTION 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease and the Lease Assignment as shall be conferred by the laws of the several jurisdictions in which this Lease or the Lease Assignment shall be filed, recorded, registered or deposited.

SECTION 25. Execution. This Lease may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Lease is dated as of February 1, 1979 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

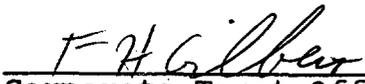
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Trustee

By 
Assistant Vice President

(Corporate Seal)

Attest:


Corporate Trust Officer